IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.364-A of 2000.

***Judgement reserved on*:26.10.2007.**

***Date of decision*:*29.10.2007*.**

State of H.P. ….. Appellant.

Versus

Durga Nand & Anr. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr.M.L.Chauhan, Addl. Advocate General.

For the Respondent : None.

Kuldip Singh, Judge.

The judgment of acquittal dated 29.10.1999, passed by learned Sub Divisional Judicial Magistrate, Rampur Bushehar, in case No.112-2 of 1998 in F.I.R. No.128/98 registered at Police Station, Jhakri, under Sections 325, 323 read with Section 34 I.P.C., has been assailed by the State in this appeal.

2. The facts, in brief, are that complainant Kaul Dassi on 29.10.1996 at about 8 a.m. was working in her fields along with her son Durga Singh, accused Durga Nand came, the complainant asked him why he was crossing from that side and a scuffle took place between them. Accused Durga Nand called his wife and she brought

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

danda from her house and handed that *danda* to her husband, accused Durga Nand caused injuries on the head, left hand of the complainant. Durga Singh tried to save the complainant from Durga Nand but in the meanwhile Sundri Devi accused also gave beatings to the complainant party. The matter was reported to the police and F.I.R. No.128/98 was registered at Police Station, Jhakri. The complainant Kaul Dassi was medically examined and the Doctor issued her M.L.C. The police after completing the investigation, presented the challan in the Court. The accused were charged under Sections 325, 323 read with Section 34 I.P.C. to which they pleaded not guilty and claimed trial. The prosecution examined 7 witnesses, the statements of respondents / accused were recorded under Section 313 Cr.P.C. They denied the prosecution case but led no evidence in defence. The respondents / accused after the conclusion of the trial were acquitted. Hence, this appeal.

3. I have heard the learned Additional Advocate General for the appellant / State and gone through the record.

4. PW-1 Kaul Dassi in her statement has stated that in the month of *Kartik* at about 8 or 9 a.m. she was cutting grass in her field along with her son Durga Singh, accused Durga Nand came and she asked him why he was crossing from that side. On this accused caught hold her from her breast and clothes and said that the path does not belong to her father and threw her on the ground. She called her son. Sundri Devi wife of Durga Nand came and brought the *danda* and with that *danda* Durga Nand gave blow on her head as well as on the little finger of her left hand. He gave *danda* blow on the

head of her son who came for her rescue. The wife of the accused Durga Nand also gave blow on her head, the blood oozed out from her head. The incident was witnessed by Karam Singh, Durga Singh and Sant Kali. The *danda* used by the accused was left on the spot which she handed over to police and is Ext.P-1. She was medically examined. In cross examination, she has stated that she stated before the police that the accused threw her on the ground but she was confronted with her statement under Section 161 Cr.P.C. where it is not so recorded. She suffered three injuries on her head and blood came out from all the injuries. She has admitted that Karam Singh is her brother in law (*Devar).*

5. PW-2 Durga Singh has stated that on 29.10.1996 at about 9.30 a.m. he heard the cries of his mother and saw that Durga Nand was beating her with *danda.* Durga Nand brought *danda* with him. He went there to rescue his mother but Durga Nand gave *danda* blow on his head also. Sundri Devi used stones for beatings. She threw stones on him. In cross examination, he has stated that he does not know whether accused gave beatings to him and his mother with stones and *danda.* He admitted that complainant party is not on the speaking terms with the accused. The blood fell on the clothes of his mother. He received three injuries on his head from stones. There are 35-36 houses in the village. PW-3 Sant Kali has stated that in the year 1998 in the month of *Kartik* at 8 a.m. her child told her that some quarrel is going on and called her out. She noticed Durga Nand accused was calling his wife to bring *danda* who took the *danda* and handed over the same to Durga Nand. She herself took stones

and might have given beatings and went home and in the process called names. Kaul Dassi and Durga Singh went to their home. There were injuries on the head of Kaul Dassi from which blood was oozing out. There was injury on the hand also. Durga Singh also suffered head injury. She saw the incident from a distance of about 300 meters. In her cross examination, she has admitted that Kaul Dassi is her sister in law (*Devrani).* She has stated that there are other houses also in the village. Many persons were present there.

6. PW-4 Karam Singh has stated that on 29.10.1998 at about 9 a.m. he heard noise from the fields of Kaul Dassi and he noticed that Durga Nand was beating Kaul Dassi. Durga Nand called his wife along with *danda,* she came and handed over the *danda to* Durga Nand. Durga Nand gave beatings to Kaul Dassi with that *danda.* Durga Singh was also given beatings with *danda.* He suffered injury in one hand with *danda* and in the other hand with stone. Sundri Devi brought the *danda* and gave beatings to Kaul Dassi. In cross examination, he has admitted that there are 35-36 houses. PW-5 Dr.R.K.Bhatia has stated that he examined Kaul Dassi and proved M.L.C. Ext.PW-1/E. In the M.L.C. he noticed two injuries. In cross examination, he has stated that injury No.1 is possible if the head of a person strikes against hard surface and injury No.2 is not possible due to *danda* blow.

7. PW-6 is constable Budhi Singh, he is a formal witness. PW-7 HC Parkash Chand is the Investigating Officer. In his cross examination, he has stated that no person from the village was taken

by him as witness of the case. This is the entire evidence led by the prosecution.

8. There are material contradictions in the statements of PW-1 Kaul Dassi, PW-2 Durga Singh, PW-3 Sant Kali and PW-4 Karam Singh. In the F.I.R. complainant has reported that only Sant Kali witnessed the occurrence but in her statement in the Court she has stated that Sant Kali, Durga Singh and Karam Singh witnessed the incident. She has, thus, made improvement in her case. In her statement in the Court she has stated that she was thrown on the ground but in her statement under Section 161 Cr.P.C. she has not stated that she was thrown on the ground. PW-5 Dr.R.K. Bhatia has stated that injury No.1 mentioned in M.L.C. Ext.PW-5/E can be caused if a person strikes against a hard surface and injury No.2 cannot be caused by *danda* blow. It has come in evidence that the blood which oozed out from the injuries on the head of the complainant fell on the clothes but no such clothes were produced during trial. There are contradictions in the statements of prosecution witnesses regarding the *danda.* PW-1 has stated that Durga Nand caught hold her from breast and clothes but no other witness has stated so. The complainant has stated that *danda* was brought by the wife of Durga Nand but PW-2 Durga Singh has not stated so. PW-1 has not stated that stones were used by the wife of Durga Nand for inflicting injuries on the person of complainant as well as Durga Singh but PW-2 has stated that Sundri Devi used stones for inflicting injuries on them. There is no medical evidence regarding the alleged injuries suffered by Durga Singh. It has come on record that there are 35-36

houses in the village but surprisingly except from near relations the prosecution has not produced any other independent witness in support of the prosecution case. PW-7 HC Parkash Chand, Investigating Officer, has admitted in his cross examination that he has not associated any person from the village as witness in the case. It appears there is a dispute about the path between complainant and accused, the possibility cannot be ruled out that the respondents / accused have been falsely implicated in the case by the complainant party. The trial Court has appreciated the material on record and has pointed out the contradictions, improvements made by the prosecution witnesses in their depositions in the Court. A possible view has been taken by the trial Court from the material on record. No case has been made out for interference. Hence, the appeal is dismissed. The bail bonds furnished by the respondents are discharged.

October 29, 2007*.** ***(Kuldip Singh)
(soni) ***Judge.***